



United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

August 15, 2019

MEMO ENDORSED

The Application is granted.

SO ORDERED:

Paul G. Gardephe
Paul G. Gardephe, U.S.D.J.

Dated: *Aug. 19, 2019*

Via ECF

Honorable Paul G. Gardephe
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *Perez v. U.S. Immigration and Customs Enforcement*, 19 Civ. 3154 (PGG)

Dear Judge Gardephe:

This Office represents U.S. Immigration and Customs Enforcement ("ICE") in this action brought by plaintiff Kamephis Perez, an attorney proceeding *pro se*, under the Freedom of Information Act, 5 U.S.C. § 552.

On August 2, 2019, Mr. Perez requested—and the Clerk of the Court entered—a certificate of default against ICE, despite the fact that proper service on ICE had not been completed at that time. Accordingly, I write respectfully to request that the Court vacate the Clerk's certificate of default, Dkt. No. 9.

Under Rule 4(i) of the Federal Rules of Civil Procedure, service upon a federal agency is properly completed only by (1) delivering or mailing, by registered or certified mail, a copy of the summons and of the complaint to the United States Attorney's Office for the district where the action is brought; (2) sending a copy of the same documents by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and (3) sending a copy of the same documents by registered or certified mail to the defendant agency. Fed. R. Civ. P. 4(i)(1)-(2).

This Office was served with the summons and complaint via U.S. certified mail on August 14, 2019.

An entry of default under Rule 55 may be vacated for "good cause." Fed. R. Civ. P. 55(c). Here, because the required service upon the U.S. Attorney's Office and upon the Attorney General had not been completed until, at earliest, August 14, 2019, the Clerk's certificate of default dated August 2, 2019, should not have been entered. Accordingly, ICE has shown more than the required "good cause" to vacate the Clerk's certificate of default.

For these reasons, ICE respectfully requests that the Court vacate the Clerk's certificate of default. I have conferred with Mr. Perez, and he agrees that the certificate of default should not have been entered and consents to its vacatur.

Thank you for your consideration of this request.

Respectfully submitted,

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York

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cc: Plaintiff Kamephis Perez (via U.S. mail)